HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No. 1215 (S/S) year 2003

Smt. Bachan Chauhan and another

Vs.

Basic Siksha Adhikari, Uttarkashi

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 09.10.2003

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Court No.6

Writ Petition No.1215 (S/S) 2003

1. Smt. Bachna Chauhan,
2. Smt. Sambhavi Chauhan .... Petitioners.

Vs.

Basic Siksha Adhikari, Uttarkashi ... Respondent.

Counsel for respondent **…Sri B.D. Kandpal.**
Counsel for petitioners **…Sri S.N.Babulkar.**
Date of Judgment **… 09-10-2003**

Hon'ble Rajesh Tandon, J.

By the present writ petition the petitioners have challenged the order dated 30-06-2003, Annexure-1 to the writ petition.

Brief facts giving rise to the present Writ Petition are that the on 30th June 2003 the petitioners namely Smt. Bachna Chauhan were transferred from Girls Junior High School Basunga to Girls Junior high School Dikholi and Smt. Sambhavi Chauhan has been transferred from Girls Junior High School Genwala Barsali to Girls Junior High School Kalyani.

The grievances of the petitioners are that in the mid term it will be improper to send them on transfer and the transfer order is volatile of Rule 21 of the U.P. Basic Education (Teachers Service Rules) 1981.

Further, the petitioners have stated that both the petitioners are residents of Uttarkashi township and they are victim of natural calamity (dangerous land slides). According to the petitioners their houses have been ruined due to natural calamities and their families are residing in the camp shelters provided by the District Administration.

Heard Sri S.N. Babulkar counsel for the petitioners, Sri B.D. Kandpal on behalf of the State and Sri H.M. Raturi on behalf of Basic Siksha Adhikari.

Rule 21 of the U.P. Basic Education (Teachers) Service Rules 1981, is only a guideline. It reads as under:-

> ***"21. Procedure for transfer:- There shall be no transfer of any teacher from the rural local area to an urban local area or vice versa or from on urban local area to another of the same district or from local area of one***

district to that of another district except on the request of or with the consent of the teacher himself and in either case approval of the Board shall be necessary."

The transfer order itself provides that according to the policy decision, transfer order has been passed. In the aforesaid circumstances, Rule 21 has no application at all. Rule 21 also does not prohibit transfer of the petitioners.;

It has been held in the case of Mrs. Shipli Bose & others V. State of Bihar & others, A.I.R. 1991 Supreme Court page 532 that the transfer order are passed in the public interest and for administrative reasons are not amenable to interference. The observations of the Apex Court to that effect is quoted below:-

"In our opinion, the courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected partly should approach the higher authorities in the Department. If the Courts continue to its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest. The High Court over looked these aspect in interfering with the transfer orders."

Similar view has been taken by the Apex Court in (2001) ***S.C.C. page 508*** which is quoted below:

"An order of transfer of an employee is a part of the service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

A perusal of the transfer order shows that the transfer order was passed on 30th June 2003 and therefore the same can not be treated as a mid term transfer. It is a routine transfer order. As will appear from the transfer order that the same has been passed on account of administrative exigency as well as

in public interest therefore the transfer order has not violated any legal right of the petitioner.

I find no infirmity in the order of transfer of the petitioners. Transfer order of the petitioners having been passed in the public interest, no interference under Article 226 of the constitution of India can be made.

As will appear from the judgment of the Apex Court that the petitioners have been given a right to approach the higher authorities, the petitioners have already made a representation to the higher authorities making their grievances regarding transfer.

So far as the natural calamity is concerned the petitioners have already made a representation regarding their transfers and in the mean time natural calamity had taken place. Looking to the aforesaid circumstances the respondents are directed to decide the representations of the petitioners within a period of one month from the date of filing of certified copy of the order. The authorities concerned will keep in mind the following facts:-

> ‘As to whether any suitable accommodation is available to the petitioners at the transferred places as stated in paragraph-5 of the writ petition to the following effect-‘that both the petitioners are resident of Uttar Kashi Township and are victim of natural calamity (Dangerous Land slides). The house of the petitioners have been ruined due to natural calamity and their families are residing in the camps and shelters provided by the District Administration. The petitioner and their family members are in trauma and dilemma. The petitioners, therefore, apart from merits pray to this Hon’ble Court to extend its mercy to save the petitioners from the irony of fate so that they may not be further disturbed by the impugned transfer order’ what actions have been taken by the District Administration to provide proper shelter to the victim of the calamity.’

The right to life as contained under Article 21 of the Constitution of India has been held to be a fundamental right. It has been held ***in the case of Kapila Hingorani v. State of Bihar, 2003 (7) AIC 18 (S.C.) page 194*** that the power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India. The State is duty bond to protect the interest of the citizens. The observations are quoted below:-

"35. The power of the State in the sphere of exercise of its constitutional power including those contained in Article 298 of the Constitution of India inheres in it a duty towards public, whose money is being invested. Article 298 of the Constitution of India confers a prerogative upon the State to carry on trade or business. While done so the State must fulfil its constitutional obligations. It must oversee protection and preservation of the rights as adumbrated in Articles 14, 19, 21 and 300-A of the Constitution of India.

36. Even before India became independent, our leaders started thinking in terms of eradication of poverty and discrimination as well as uplift of downtrodden. At the time of framing of the Constitution, the Constitution makers had before them the harrowing tales of starvation deaths and particularly the infamous Bengal famine.

44. After the establishment of the State, the obligation to protect the right to equality was cast on the Rulers. It was made a part of the Ruels of Raja Dharma, the Constitutional law.

YATHA SWARIN BHUTANI DHARA DHARYATE SAMAM TATHA SWARIN BHUTANI BIBHARTE PARTHIVM VARTAM

"Just as the mother earth gives equal support to all the living beings, a kind should give support to all without any discrimination" (Manu IX 31). This also meant that the kings were required to afford equal treatment to all the citizens in the same manner in which a mother treats all her children.

47. In Kishen Pattnayak and another v. State of Orissa, a Division Bench of this Court while considering poverty and starvation deaths in drought prone districts of Kalahandi and Koraput in the State of Orissa having regard to the report of the District Judge of Kalahandi noticed that Natural Calamities Committee had been constituted at the districts level of Kalahandi and koraput directed the Government of Orissa to recommend at least five persons belonging to the recognized voluntary organizations like Sarvodaya Gandhi Peace Foundation, Ramakrishna Mission, Bharat Sewa Sangha and registered voluntary agencies as members of the said Natural Calamities Committee. This Court monitored for a long time the measures taken by the State for the purpose of mitigating hunger, poverty, starvation deaths etc. of the people of Kalahandi and Koraput. It opened that if such measures are taken, there can be no doubt that it will alleviate to a great extent the miseries of the people of Kalahandi. It was directed:

"… The Natural Calamities Committee shall also keep a watch over the working of the social welfare measures which are being taken and may be taken in future. Shri Pattanyak also does not dispute that if such of Kalahandi and Koraput. We hope and trust that in view of the prompt action that has been taken by the government, soon the miseries of the people of these two districts will be over.

48. Yet again in M/s Shantistar Builders v. Narayan Khimalal Totame and others, this Court observed:

"Basic needs of man have traditionally be accepted to be three – food, clothing and shelter. The right to life is guaranteed in any civilized society. That would take within its sweep the right of food, the right to clothing, the right to decent environment and a reasonable accommodation to live in…"

50. The term 'life' used in Article 21 of the Constitution of India has a wide and far reaching concept. It includes livelihood and so many other facets thereof. "Life" as observed by Field, J. in Munn v. Illinois, means something more than mere animal existence and the inhibition against the deprivation of life extends to all those limits and faculties by which life is enjoyed. (See Board of Trustees of the Port of Bombay v. Dilipkumar Raghavendranath Nadkarni and others and Olga Tellis and others v. BombayMunicipal Corporation and others."

The District Administration therefore is required to look into the grievances of the petitioners with regard to the day to day living. The District Administration will also look into the matter as to whether proper residences are available to the victims of the calamity. Simultaneously the District Administration will also consider as to whether suitable places are available to the petitioners at the place where they are residing or where they are transferred. If the petitioners are not relieved they shall not be relieved till the representations are pending before the authorities concerned.

With these observations the writ petition is disposed of.

(Rajesh Tandon, J.)

Dated: 9.10.2003

ISB